

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

**MORGAN KEEGAN & COMPANY,**  
**INC.,**

**Petitioner,**

**v.**

**MUNICIPAL WORKERS  
COMPENSATION FUND, INC.**

**Respondent.**

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**CIVIL ACTION NO.**

**PETITION FOR CONFIRMATION OF  
ARBITRATION AWARD AND FOR FINAL JUDGMENT**

Petitioner MORGAN KEEGAN & COMPANY, INC. (“Morgan Keegan”), pursuant to the Federal Arbitration Act, 9 U.S.C. § 9, hereby seeks an Order confirming the arbitration award (the “Award”), which Morgan Keegan received on August 1, 2012 in the matter of *Municipal Workers Compensation Fund, Inc. v. Morgan Keegan & Co., Inc., et al.*, FINRA Dispute Resolution No. 09-03120 (the “Arbitration”), and entering a final judgment on the grounds set forth below.

### **Parties, Jurisdiction, and Venue**

1. Morgan Keegan is a Tennessee corporation with its principal place of business in Memphis, Tennessee.
2. Municipal Workers Compensation Fund, Inc. ("MWCF") is an Alabama corporation with its principal place of business in Montgomery, Alabama.

3. Jurisdiction in this court is proper under 28 U.S.C. § 1332(a) because Morgan Keegan and MWCF are citizens of different states, and because the matter in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue in this court is proper under 9 U.S.C. § 9 because the Award was made in Birmingham, Alabama, within this District, based upon an arbitration that took place in Birmingham, Alabama.

5. Venue in this court is also proper under 9 U.S.C. § 9 because the parties to the arbitration signed Uniform Submission Agreements, which provided, “The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.”

#### **The Arbitration**

6. On or about May 28, 2009, MWCF filed a Statement of Claim initiating the Arbitration before the Financial Industry Regulatory Authority (“FINRA”).

7. From June 4 through June 19, 2012, a final hearing was held in the Arbitration in Birmingham, Alabama. At the hearing, MWCF sought damages in excess of \$30 million.

8. On August 1, 2012, the arbitration panel entered the Award, denying all of MWCF's claims, and dismissing the claims with prejudice. The Award is attached hereto as **Exhibit 1**.

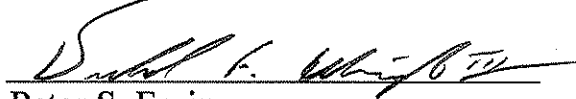
9. This Motion is filed within one year after the Award was made and within one year after the Award was entered.

10. Pursuant to the Federal Arbitration Act, 9 U.S.C. § 9, Morgan Keegan is entitled to confirmation of the Award.

11. No party has sought to vacate, modify, or correct the Award.

**WHEREFORE**, Petitioner Morgan Keegan requests that the Award be confirmed and that a judgment be entered, and for such other and further relief as this Court may deem just, proper, and equitable, along with the costs and disbursements of this proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Peter S. Fruin", is written over a horizontal line.

Peter S. Fruin

Donald F. Winningham III

ATTORNEYS FOR PETITIONER  
MORGAN KEEGAN & COMPANY, INC.

OF COUNSEL:

**MAYNARD, COOPER & GALE, P.C.**

1901 Sixth Avenue, Suite 2400  
Regions/Harbert Plaza  
Birmingham, Alabama 35203  
(205) 254-1000  
(205) 254-1999 (FAX)  
pfruin@maynardcooper.com  
dwinningham@maynardcooper.com

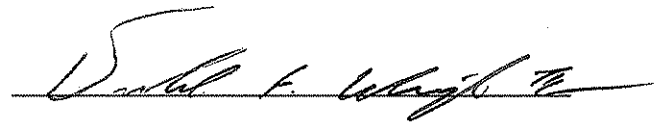
George D. Sullivan  
**GREENBERG TRAURIG, LLP**

200 Park Avenue  
New York, NY 10166  
(212) 801-9200  
(212) 801-6400 (FAX)  
sullivang@gtlaw.com

**CERTIFICATE OF SERVICE**

Respondent will be served personally at the following address:

Municipal Workers Compensation Fund, Inc.  
535 Adams Avenue  
Montgomery, AL 36104



OF COUNSEL

# **EXHIBIT**

# **1**

Aug. 1. 2012 4:57PM

No. 7652 P. 1/14

**FINRA Dispute Resolution**  
**Southeast Processing Center**  
**Boca Center Tower 1**  
**5200 Town Center Circle**  
**Boca Raton, FL 33486**  
**Email: FL-Main@finra.org**  
**Phone: 561-416-0277**  
**Fax: 301-527-4868**



Number of Pages including the Cover Sheet: \_\_\_\_\_

Date: 08/01/2012

Case Number: 09-03120

Case Name: Municipal Workers Compensation Fund, Inc. vs. Morgan Keegan & Company, Inc., and  
Morgan Asset Management, Inc.

To: George D. Sullivan

Phone: 212-801-9200 Fax: 212-801-6400

From: William Cassidy *Wm*  
Senior Case Administrator

Message:

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This facsimile transmission is intended only for the addressee(s) shown above. It may contain information that is privileged, confidential, or otherwise protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons other than addressee is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at the above number.

Aug. 1. 2012 4:57PM

No. 7652 P. 2/14



VIA FACSIMILE AND MAIL

August 1, 2012

George D. Sullivan, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, NY 10166

Subject: FINRA Dispute Resolution Arbitration Number 09-03120  
Municipal Workers Compensation Fund, Inc. vs. Morgan Keegan & Company, Inc.,  
and Morgan Asset Management, Inc.

Dear Mr. Sullivan:

Enclosed please find the decision reached by the arbitrator(s) in the above-referenced matter.

Responsibility to Pay Monetary Award

FINRA rules provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Expedited Suspension Proceedings for Non-Payment of Awards

Article VI, Section 3 of the FINRA By-Laws and FINRA Rule 9554 permit FINRA to suspend or cancel the registration of any firm or associated person that fails to comply with a FINRA arbitration award.

Firms are required to notify FINRA in writing within 30 days of receipt of an award that they or their associated persons have paid or otherwise complied with the award, or to identify a valid basis for non-payment. We also request that prevailing claimants notify us in writing when their awards have not been paid within 30 days of receipt of the award.

Written notification concerning award compliance or lack thereof should be directed to:

Investor protection. Market integrity.

Dispute Resolution  
Southeast Regional Office

Boca Center Tower 1  
5200 Town Center Circle  
Suite 200  
Boca Raton, FL  
33486-1015

t 561 416 0277  
f 301 527 4868  
www.finra.org

Aug. 1. 2012 4:57PM

No. 7652 P. 3/14

David Carey  
FINRA Dispute Resolution  
One Liberty Plaza, 165 Broadway, 52nd Floor  
New York, NY 10006  
212-858-4333 (tel) | 301-527-4706 (fax) | david.carey@finra.org (email)

#### Right to File Motion to Vacate Award

FINRA rules provide that, unless the applicable law directs otherwise, all awards rendered are final and are not subject to review or appeal. Accordingly, FINRA has no authority to vacate this award. Any party wishing to challenge the award must make a motion to vacate the award in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. If you are not represented by counsel and wish to challenge the award, we urge you to seek legal advice regarding any rights or remedies available to you.

#### Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and should be sent to the address specified on the invoice. Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

#### Arbitrator Evaluation

FINRA encourages parties to complete Arbitrator Evaluation Forms at the conclusion of every case. We will utilize your comments in our ongoing efforts to evaluate and improve the services our forum provides. You can complete the Arbitrator Evaluation Form on our website at [www.finra.org/arbevaluation](http://www.finra.org/arbevaluation).

#### Party Submissions to Arbitrators After a Case Closes

FINRA rules provide that parties may not submit documents to arbitrators in cases that have been closed except under the following limited circumstances: 1) as ordered by a court; 2) at the request of any party within 10 days of service of an award, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or 3) if all parties agree and submit documents within 10 days of service of an award. Any documents, if submitted, must be sent through FINRA.



Aug. 1. 2012 4:58PM

No. 7652 P. 4/14

Questions Concerning Award

Should you have any questions, please contact me at the phone number or email address provided below. Parties should not directly contact arbitrators under any circumstances.

Very truly yours,

*William Cassidy / LMM*

William J. Cassidy  
Senior Case Administrator  
Phone: 561-416-0277  
Fax: 301-527-4868  
FL-Main@finra.org

WJC:Imm:LC09A  
idr: 09/14/2011

RECIPIENTS:

Peter Mougey, Esq., Municipal Workers Compensation Fund Inc.  
Levin, Papantonio, P.A., 316 S. Baylen Street, Suite 600, Pensacola, FL 32502

S. Lawrence Polk, Esq., Morgan Asset Management, Inc.  
Sutherland Asbill & Brennan, 999 Peachtree Street, NE, Atlanta, GA 30309-3996

George D. Sullivan, Esq., Morgan Keegan & Company, Inc.  
Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166

Aug. 1. 2012 4:58PM

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**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Municipal Workers Compensation Fund, Inc.

Case Number: 09-03120

vs.

Respondents  
Morgan Asset Management, Inc.  
Morgan Keegan & Company, Inc.

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customer vs. Member and Non-Member

**REPRESENTATION OF PARTIES**

For Claimant Municipal Workers Compensation Fund, Inc.: Peter Mougey, Esq., Levin, Papantonio, P.A., Pensacola, Florida and Page Poerschke, Esq. and Laura Dunning, Esq., Haskell Slaughter Young & Rediker, LLC, Birmingham, AL.

For Respondent Morgan Asset Management, Inc. (Morgan Asset Management): S. Lawrence Polk, Esq. and Aaron S. Furniss, Esq., Sutherland Asbill & Brennan, Atlanta, Georgia.

For Respondent Morgan Keegan & Company, Inc. (Morgan Keegan): George D. Sullivan, Esq. and Terry R. Weiss, Esq., Greenberg Traurig, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: May 29, 2009.  
Municipal Workers Compensation Fund, Inc. signed the Submission Agreement: July 17, 2009.

Statement of Answer filed by Respondent Morgan Asset Management on or about: November 9, 2009.  
Morgan Asset Management, Inc. signed the Submission Agreement: September 14, 2009.

Statement of Answer filed by Respondent Morgan Keegan on or about: November 9, 2009.  
Morgan Keegan & Company, Inc. signed the Submission Agreement: August 24, 2009.

Respondent Morgan Keegan's Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims filed on or about: November 10, 2011.

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Arbitration No. 09-03120  
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Claimant's Opposition to Morgan Keegan's Motion in Limine filed on or about:  
November 21, 2011.

Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements filed by  
Respondent Morgan Keegan on or about: November 10, 2011.  
Claimant's Opposition to Morgan Keegan's Motion in Limine filed on or about:  
November 21, 2011.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violation of NASD and NSYE Rules; breach of contract; negligence; fraud; and, violations of the Alabama Securities Act. The causes of action relate to Claimant's investments in the RMK Select Intermediate Bond Fund, RMK High Income Fund, RMK Advantage Income Fund, RMK Multi-Sector Income Fund, and RMK Strategic Income Fund.

Unless specifically admitted in their respective Answers, Respondents Morgan Keegan and Morgan Asset Management (Respondents) denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in excess of \$15,000,000.00, interest, costs, legal fees, punitive damages, and such other and additional damages and relief as may be shown at hearing and which the undersigned arbitrators (Panel) deemed just and equitable.

At the close of the hearing, Claimant requested compensatory damages of \$31,000,000.00.

Respondent Morgan Keegan requested dismissal of the Statement of Claim, that all costs and assessments by FINRA be borne by Claimant and that Morgan Keegan be awarded its preparation costs, travel expenses, expert witness fees and such other further and general relief to which it may be entitled.

Respondent Morgan Asset Management requested dismissal of the Statement of Claim, that all costs and assessments by FINRA be borne by Claimant and that Morgan Asset Management be awarded its preparation costs, travel expenses, expert witness fees and such other further and general relief to which it may be entitled.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

In its Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims, Respondent Morgan Keegan asserted, among other things, the following: a federal district court recently vacated an arbitration award involving the RMK funds because the claims were derivative; the Alabama Supreme Court has repeatedly held

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Arbitration No. 09-03120  
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that these claims involving the RMK funds are derivative; and, Claimant has no claim based on the RMK funds' offering and other disclosure materials. In its Opposition, Claimant asserted, among other things, the following: Respondent Morgan Keegan's motion is a disguised motion to dismiss which is procedurally improper because it was brought fewer than 60 days before the final hearing; Respondent Morgan Keegan's argument that Claimant's claims are shareholder derivative claims is false; Claimant's claims are direct claims against Claimant's financial advisors, Respondents Morgan Keegan and Morgan Asset Management; the facts relating to the funds' investments are relevant to Claimant's allegations and should not be excluded; and, Morgan Keegan's effort to exclude evidence invites the Panel to commit reversible error under the Federal Arbitration Act.

In its Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements, Respondent Morgan Keegan asserted, among other things, the following: the regulatory settlements do not exempt Claimant from its duty to prove its allegations, nor do they take away Respondent Morgan Keegan's right to a fair hearing and to defend itself; mere allegations of wrongdoing are inadmissible and do not assist the trier of fact; the regulatory actions and regulatory settlements are irrelevant and should be excluded under concepts of fairness and the rules of evidence; Claimant is held to a higher standard of proof than the regulators and may not use the regulatory matters as an excuse that the bar should be lowered; and, introduction of the regulatory matters will unfairly prejudice Respondents Morgan Keegan and Morgan Asset Management, will confuse the issues and unnecessarily extend the proceedings. In its Opposition, Claimant asserted, among other things, the following: the regulatory orders are presumptively discoverable; the regulatory findings are very similar to many of the allegations made by Claimant; the evidence developed by the regulators revealed numerous internal problems and concerns that should have been disclosed to Claimant and is, therefore, relevant and admissible under FINRA rules; many courts have held that findings of fact and conclusions of law in an SEC consent order are admissible; and, the regulatory documents here would be admissible in court as public records and reports so the Panel should not presumptively disclaim any ability to at least consider them.

On or about May 1, 2012, the Panel issued an order which denied Respondent Morgan Keegan's Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims and Respondent Morgan Keegan's Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements.

Respondent Morgan Asset Management is not a FINRA member firm. Therefore, Respondent Morgan Asset Management's submission to FINRA jurisdiction was on a voluntary basis. Respondent Morgan Asset Management voluntarily submitted to FINRA jurisdiction having filed a Submission Agreement, answered the claim, and appeared and testified at the hearing. Accordingly, Respondent Morgan Asset Management is bound by the determination of the Panel on all issues submitted.

During the evidentiary hearing, Respondents moved for directed verdict on some of Claimant's allegations including damages based on "well managed account." Claimant opposed the motion. The Panel denied the motion subject to receipt of further evidence.

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The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety, with prejudice.

Any and all relief not specifically addressed herein, including Claimant's requests for punitive damages and attorneys' fees, is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing fee	=\$ 1,800.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent Morgan Keegan is assessed the following:

Member Surcharge	=\$ 3,750.00
Pre-Hearing Processing Fee	=\$ 750.00
Hearing Processing Fee	=\$ 5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 29, 2011 – April 8, 2011, joint adjournment request	= \$ 1,200.00
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The Panel has assessed \$600.00 of the adjournment fees to Claimant.

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Respondents.

March 12, 2012 – April 6, 2012, joint adjournment request	= \$ 1,200.00
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The Panel has assessed \$600.00 of the adjournment fees to Claimant.

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Respondents.

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May 8-11, 2012, adjournment request by Respondent Morgan Keegan. The Panel has waived assessment of the adjournment fee.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

May 8-11, 2012, adjournment request by Respondent Morgan Keegan. The Panel has waived assessment of the three-day cancellation fees.

### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on a discovery-related motion on the papers  
 with one (1) arbitrator @ \$200.00 = \$ 200.00  
 Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fee to Claimant.

The Panel has assessed \$100.00 of the discovery-related motion fee jointly and severally to Respondents.

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
 Pre-hearing conference: January 18, 2011 1 session

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 6,000.00  
 Pre-hearing conferences: January 11, 2010 1 session  
 November 4, 2011 1 session  
 May 1, 2012 1 session  
 May 4, 2012 1 session  
 May 22, 2012 1 session

Thirty-one (31) Hearing sessions @ \$1,200.00/session = \$37,200.00  
 Hearing Dates: June 4, 2012 2 sessions  
 June 5, 2012 2 sessions  
 June 6, 2012 2 sessions  
 June 7, 2012 2 sessions  
 June 8, 2012 3 sessions  
 June 9, 2012 1 session  
 June 11, 2012 3 sessions



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Arbitration No. 09-03120

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June 12, 2012	3 sessions
June 13, 2012	3 sessions
June 14, 2012	2 sessions
June 15, 2012	3 sessions
June 18, 2012	2 sessions
June 19, 2012	3 sessions

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Total Hearing Session Fees	= \$43,650.00
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The Panel has assessed \$21,825.00 of the hearing session fees to Claimant.

The Panel has assessed \$21,825.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

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FINRA Dispute Resolution

Arbitration No. 09-03120

Award Page 7 of 7**ARBITRATION PANEL**

William F. Julavits	-	Public Arbitrator, Presiding Chairperson
Patricia A. DeWitt	-	Public Arbitrator
Eric Howard Kunis	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**/s/

William F. Julavits  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

/s/

Patricia A. DeWitt  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

Eric Howard Kunis  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

August 1, 2012

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)



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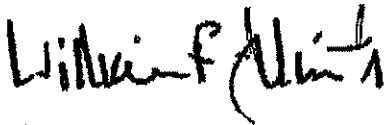
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Arbitration No. 09-03120  
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**ARBITRATION PANEL**

William F. Julavits	-	Public Arbitrator, Presiding Chairperson
Patricia A. DeWitt	-	Public Arbitrator
Eric Howard Kunis	-	Non-Public Arbitrator

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**Concurring Arbitrators' Signatures**

William F. Julavits  
Public Arbitrator, Presiding Chairperson



Signature Date

Patricia A. DeWitt  
Public Arbitrator

Signature Date

Eric Howard Kunis  
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution office use only)

FINRA Dispute Resolution  
Arbitration No. 09-03120  
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**ARBITRATION PANEL**

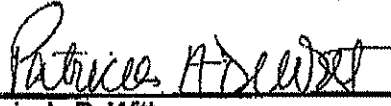
William F. Julavits	-	Public Arbitrator, Presiding Chairperson
Patricia A. DeWitt	-	Public Arbitrator
Eric Howard Kunis	-	Non-Public Arbitrator

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\_\_\_\_\_  
William F. Julavits  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Patricia A. DeWitt  
Public Arbitrator

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Eric Howard Kunis  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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Date of Service (For FINRA Dispute Resolution office use only)

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**ARBITRATION PANEL**

William F. Julavits	-	Public Arbitrator, Presiding Chairperson
Patricia A. DeWitt	-	Public Arbitrator
Eric Howard Kunis	-	Non-Public Arbitrator

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**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William F. Julavits  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Patricia A. DeWitt  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
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Eric Howard Kunis  
Non-Public Arbitrator

  
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Signature Date

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Date of Service (For FINRA Dispute Resolution office use only)